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No. 82-1692

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

ROBERT ARGENTO AND JOSEPH SANSONE,

Petitioner,

vs.

BENNIE LENARD,

Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioners seek review of the decision of the United States Court of Appeals for the Seventh Circuit entered February 1, 1983 in Lenard v. Argento, 699 F.2d 874 (7th Cir. 1983). In that opinion the Court of Appeals affirmed the finding of liability against Petitioners Argento and Sansone on Lenard's claim that he was deprived of his right to equal protection of the laws in violation of 42 U.S.C. §1985 (3) (Count II of the

Complaint).

The case was tried before a jury over a five and one-half week period in February and March, 1980. The jury found Argento and Sansone liable on three of the four claims brought against them, and in the bifurcated liability phase, awarded Lenard a total of $360,000 in damages. Subsequent to the trial, the district court awarded Lenard $180,500 in attorneys fees pursuant to 42 U.S.C. §1988.

The Court of Appeals after reversing the finding of liability for malicious prosecution and for what it opined was a 1985(2) violation that related to the malicious prosecution claim (Counts III and V of the Complaint), then remanded the matter to the district court for a retrial on the damages issue, and for a recomputation of the attorneys fees in

light of its opinion. Before the damages issue could be retried, Petitioners filed their pending Petition for a Writ of Certiorari. So, in its present status, there is no money judgment in this case. In the course of its opinion, the Seventh Circuit gives direction to the trial court with respect to what evidence to permit in re-trying the damages issue. Petitioners thus anticipate an award to Lenard of which they will disapprove. They object both to the guidance given the district court by the Court of Appeals, as well as to its affirmance of liability on Count II.

Petitioners in their statement of the case as well as their three page "factualsummary", Petition for Writ of Certiorari at 17, carefully avoid the relevant facts that describe the events of January 31, 1977 as related in 2,500 pages of trial transcript. Not only does

this "factual summary" excise virtually all the evidence which was unfavorable to Petitioners, but what it does summarize seriously misrepresents what the evidence was. The statement of facts is thus noteworthy not for what it says, but for what it omits.

The Petitioners'"factual summary" neglects to mention the following. At the time that Lenard, a black employee of International Harvester Company for 13 years, was handcuffed behind his back at 1:00 p.m. and taken into custody, he was in excellent health and had no physical disability. When he was released from custody at 3:00 a.m., the next morning, he was admitted to a Hospital for 39 days Record at 1596. Three months later he was readmitted for surgery to repair tendons of ligaments of the left shoulder that were torn while in custody. Record

at 1488 The orthopedic surgeon who treated Lenard testified that the injury which resulted in permanent disability, Record at 1490, was caused by a sudden jerk or force to the arm. Record at 1492. An opthamologist testified that Lenard suffered traumatic retinopathy to the eye, Record at 1222, caused by a direct blunt injury. Record at 1217. According to the opthamologist, the injury, which is permanent, could not have occurred in the manner that the Defendants claimed it happened. Record at 1218.

The Defendant police officers attributed Lenard's injuries to two falls in the police department parking lot, and a third fall up the stairwell in the inside of the station. Two officers came out to the parking lot to assist Argento in bringing Lenard, who was still handcuffed behind his back, inside the

station. Record at 290. Argento testified that, while holding Lenard, they slipped on the ice and all four fell to the ground. Record at 291. Lenard fell on his face and all three policemen "went down on him". Record at 293. They got up, and everybody fell down a second time. Record at 294. Again, according to Argento, Lenard fell on his face. Record at 295. They got inside the doorway, and all four men started up the stairs. They all fell a third time, and for the third time, Lenard fell directly on his face. Record at 297.

Lenard testified that after being handcuffed at the accident scene, he was walked over to Argento's squad car and placed in the back seat. After closing the door, Argento and Sansone talked to one another outside. Record at 1574. After Argento got in the car, he turned

and said to Lenard "God damn it, I'm going to teach you something." Lenard said he asked "Officer what have I did?" Record at 1574-1575. Argento excitedly said "God damn it, nigger, What you say? Huh? What you say?" Record at 1575. At that point, Lenard was hit with what looked to him like a stick. He felt two more quick hits and lapsed into unconsciousness. Record at 1576. As Argento's squad car pulled up behind the Melrose Park police station, he remembered hearing Argento tell someone "I got a big Black nigger." Record at 1580. He was grabbed around the neck and went down on his knees. Record at 1581. As he was being kicked and hit, he begged "Please don't kill me. I'm trying, I'm trying. Please don't kill me." At this point he lapsed into unconsciousness again. Record at 1582.

He next remembered laying on the wet

floor of a cold cell. His clothing had been removed and he had been stripped down to his underwear. He had been doused with water, was in extreme pain, and was very cold and wet. Record at 1584. His face and left arm were hurting. He couldn't see. A police officer brought him his pants, turtleneck sweater, coat and his rubber galoshes that still had his shoes in them. Record at 1585. Argento admitted that he was the one who removed Lenard's pants and the person who later gave the pants back to Lenard. Record at 299-300. The two officers who, along with Argento, brought Lenard into the station, as well as the shift sergeant on duty all testified that they knew Lenard was seriously injured when he was brought in. Record at 778, 819, 886. Nevertheless, Lenard was put face down in a concrete pit in the cell, stripped of his clothing, doused with

water and subjected to a sub-zero wind from an open window. First aid was not administered, Record at 788, nor was any medical assistance summoned. Record at 785, 793, 819. When Andrea Dreyer, the civilian complainant, arrived at the station, Argento told her that Lenard was downstairs "sleeping it off in his long-johns." Record at 669. Nothing was mentioned about any problem getting Lenard into the station, Record at 70, nor about any injuries.

Lenard continued to lay on a concrete slab in that cell. He remembered two officers asking if he wanted to go to the hospital. He answered yes, but please call my wife. One of the officers then said "Leave him alone. He doesn't want to go to the hospital." Record at 1586. Because of the injuries he sustained, he could not

see who these officers were, Record at 1587, but Argento testified that he had returned to Lenard's cell "to inquire whether Lenard wanted to see a doctor." Petition for Writ of Certiorari at 23. Lenard continued to lay on the concrete slab. He was cold, shaking and in pain. A cold wind was blowing on him and he pleaded for someone to turn the fan off. Record at 1587. A police officer came back and said "No. Reason you're cold this window is open." This officer (Lt. Vertuno) gave him a blanket. Record at 1588, 1704.

The next thing he remembered was being told by two officers he had to be fingerprinted. He was in pain and couldn't see who these officers were. They led him down some stairs, fingerprinted him, and ordered him to sign something. He said he couldn't see

and asked if he could wait until his wife got there. Record at 1589. To this, one of the officers replied, "It's nothing but your fingerprints. God damn it, that's the reason you're looking like you are now." The officer took his hand and forced his signature. Record at 1589. He was returned to the same cell. This 5' x 7' cell, in which Lenard was incarcerated from 1:30 p.m. until 3:00 a.m., was the only cell of four which did not have a cot, bunk, or any place where a person can sit. An arrestee is put in that cell when the officer feels as though the arrestee will not be locked up for very long. Otherwise, he's put in one of the other cells where there are bunks. Record at 1126, 1129.

While Lenard lay injured and semi-conscious in this cell, his step-son, Floydell Hennings, also a Harvester employee, went to the police station at

approximately 3:50 p.m. Record at 1433. Hennings was dispatched by a family member to check on Lenard after she had been telephoned by one of Lenard's co-workers who had observed Lenard being taken into custody at the accident scene. Record at 1431-1433. Hennings did not know that his father was injured. Record at 1439. When he arrived at the station, he spoke to Lt. Vertuno and to officer Argento who was in the desk area. Although bond had been set at 2:30 p.m., Record at 457, Vertuno told Hennings that Lenard had not yet been processed, so Hennings could not see him. Record at 1435. Argento, who was standing nearby, also said "No, you can't see him." Record at 1436-1437. This, in spite of a police department rule that requires the desk or arresting officer to call friends or family of an arrestee in order to post

bail. Record at 479-480. No one told Hennings that Mr. Lenard was laying in the cell seriously injured, Record at 1479. No call had been made to the Lenard family notifying them that Lenard was in custody, and no urgently needed medical care had been administered. It was not until after Hennings made the 1 1/2 hour drive back to the Lenard home that he got a call from Lenard pleading for someone to get him out of jail because they were trying to kill him. Record at 1439-1440. He, his mother, aunt and sister then drove back to the Melrose Park Station. Record at 1441.

Mrs. Lenard went into the cell area. Hennings heard her scream, and he and his aunt went back. Record at 1442. Lenard was laying on a slab. There was water on the floor. Hennings touched his father, and Lenard raised up. He had, according to Hennings, been beaten beyond

recognition. Record at 1443.

Hennings returned to the desk area and called an attorney. Record at 1444. When he got off the telephone, Officer Spair, a cousin of Sansone's, Record at 745, told Hennings that he would "like to see me with my glasses off." Record at 1445. Another officer behind the desk told Spair "Pull your gun or night stick and go around there and show him what a man is." Record at 1446. At this point, Vertuno came in and told Spair to go outside and go to work. Record at 1447-1448.

At 8:00 p.m., Lenard was finally taken to a nearby hospital by two officers. He was returned to the same concrete cell at around 9:00 p.m. He was still shaking from the cold, the floor was still wet, and he was in pain. Record at 1594-1595. When Mrs. Lenard returned

again at approximately 3:00 a.m. and while she was posting bond, a voice came over the speaker at the desk saying "Chicken George, Chicken George, kill that nigger, kill that nigger." Record at 1450. The officer at the desk acted like that was normal, Record at 1451, and did nothing about it. Finally, after being released to his family, Lenard was taken to another hospital where he was immediately admitted. Record at 1596.

ARGUMENT

INTRODUCTION

The Petitioners claim there is an important federal question in need of resolution here and that the Seventh Circuit decision is in conflict with applicable decisions of this Court. Both of these would be factors weighing in favor of granting certiorari under Supreme Court Rule 17 if they existed, but they don't. What the Petitioners are

asking for essentially is a review of the evidence even though the jury, district court and appellate court all approved the findings of fact below. Because they rely on misrepresenting the decision of the Court of Appeals and a version of the facts as they wish them to be, the Petitioners are able to construct questions for review which are not presented by the record in this case.

I

THERE WAS NO FINDING BY THE COURT OF APPEALS OF A CIVIL CONSPIRACY IN THE ABSENCE OF AN OVERT ACT

Question 1 is not raised by this case. Here the Petitioners amazingly assert that the Court of Appeals contravenes established law by allowing recovery for a civil conspiracy where there was no overt act. Petition for Writ of Certiorari at 13. They then turn around and quote the Seventh Circuit's

holding that

> [t]here was sufficient evidence for a jury to reasonably believe that there was an overt act and circumstantial evidence of an agreement among the police, particularly Argento and Sansone, to conspire to deprive Lenard of his civil rights.

Petition for Writ of Certiorari at 25.

This holding, which is the heart of this case, is entirely consistent with, and relies upon a correct analysis of the established law on civil conspiracy. The Court of Appeals plainly states that

> there cannot be a civil cause of action for conspiracy under §1985 without an overt act. Williams v. St. Joseph Hospital, 629 F.2d 448, 451 n.3 (7th Cir. 1980). "[I]t is the overt act which moves the conspiracy from the area of thought and conversation into action and causes the civil injury and resulting damage." Hoffman v. Halden, 268 F.2d 280, 295 (9th Cir. 1959), overruled in part on other grounds, Cohen v. Norris, 300 F.2d 24 (9th Cir. 1962)

Lenard v. Argento, 699 F.2d 874, 883.

Furthermore, the Court of Appeals, quoting Hoffman-LaRoche, Inc. v. Greenberg, 447 F.2d 872, 875 (7th Cir. 1971) goes on to say at 883:

> Circumstantial evidence may provide adequate proof of conspiracy. The law does not demand proof that each conspirator knew the exact limits of the illegal plan or the identity of all participants therein.

Citing Hampton v. Hanrahan, 600 F.2d 600, 621, (7th Cir. 1979) rev'd in part on other grounds, 446 U.S. 754 (1980) it reiterates, at 883, that

> [i]n such a situation, "it is the jury which 'weighs the contradictory evidence and inferences' and draws 'the ultimate conclusion as to the facts.'" [citing Continental Ore Co. v. Union Carbide and Carbon Corp., 370 U.S. 690, 700-01 (1962).]

See also Adickes v. Kress, 398 U.S. 144, 176 (1970) (Black J., Concurring).

There cannot be a more plain and correct statement of the law of civil conspiracy. The Court of Appeals simply applies the

law to the facts of this case and concludes that "[f]rom a review of the facts and record in this case, it was not unreasonable for this jury to reach the verdicts regarding Counts I and II." Lenard v. Argento, 699 F.2d at 883.

By misrepresenting what the opinion was Petitioners try to sneak in the back door what they can't get in through the front--a review of the evidence of this five and one-half week trial and a setting aside of the jury's verdict.

Numerous overt acts were pled and proven in this case. Petitioners skirt this obvious fact by mischaracterizing this case as having just one overt act--a beating. Yet, as the opinion of the Court of Appeals notes, "the charge given to the jury was not a 'conspiracy to perform a beating' but rather a conspiracy to deprive [Lenard] due course

of justice and equal protection of the law." Lenard v. Argento 669 F.2d at 882. The charge was "not isolated to a particular event, but rather related to the deprivation of ...'equal protection' under the law." Id. It is elementary that there are numerous ways in which one can be deprived of equal protection under the law. It appears as if the Petitioners erroneously view 42 U.S.C. §1985 as if it were the conspiracy counterpart of a substantive §1983 action, which it is not. Section 1985 grants a separate and distinct right of action from that granted under 42 U.S.C. §1983. Bottone v. Lindsely, 170 F.2d 705 (10th Cir. 1948), cert. denied, 336 U.S. 944 (1949).

The record refutes Petitioners' representation that "there is not a scintilla of evidence to connect either officer Argento or Officer Sansone to

these acts," or that Argento's "only further involvement with Lenard was when he returned to the cell a few minutes later to inquire whether Lenard wanted to see a doctor, which Lenard refused." Petition for a Writ of Certiorari at 22-23 (Emphasis in the original). For one thing, in addition to being present at the accident scene, Sansone was present in the Police Station and participated with Argento in conversation about the case and in preparing reports. Record at 667. As to Argento, in addition to his involvement in bringing Lenard into the station and the cell, there is direct evidence both from Hennings and Lt. Vertuno that Argento, who, along with at least four other officers, knew Lenard lay seriously injured in the cell, deliberately concealed this information from Hennings

(and from Dreyer as well), participated in lying about not being processed, prohibited Hennings from seeing his father, stripped Lenard of his clothing, then callously joked about it with Dreyer, and denied Lenard urgently needed medical treatment. And, "there was sufficient evidence of racially discriminatory animus to meet the Griffin standard for §1985 conspiracies." Lenard v. Argento, 699 F.2d at 883. As the Court of Appeals notes, because of Lenard's condition, he was unable to identify the officers involved. This is hardly tantamount to absolving Argento and Sansone of culpability as the Petitioners argue.

It is not necessary that Argento and Sansone personally performed all the sadistic acts proven. Conspiracy is merely the mechanism to impose liability on one defendant for the acts of the

others performed in pursuance of the conspiracy. See Nesmith v. Alford, 318 F.2d 110, 126 (5th Cir. 1963), cert. denied, 375 U.S. 975 (1964). There was more than sufficient evidence from the injuries Lenard sustained while he was in custody for the jury "to reasonably conclude that at least Argento and Sansone had entered into and committed 'an act' in the furtherance of a conspiracy to deny equal protection." Lenard v. Argento, 699 F.2d at 883. It hardly serves the cause of jurisprudence when a Petitioner mistates what the opinion of the court below was, and then, relying on the facts of the case for his argument, goes on to misrepresent what those facts were.

II

PETITIONERS WERE HELD LIABLE FOR DAMAGES SUSTAINED AS THE RESULT OF THE CONSPIRACY TO DEPRIVE RESPONDENT OF EQUAL PROTECTION OF THE LAW

Question 2 is similarly not presented by the record. The Court of Appeals did not rule, as Petitioners claim, that conspirators will be held liable for damages not shown to be the result of acts performed in furtherance of the conspiracy. The general conspiratorial objective in this case was to deprive Bennie Lenard of the due course of justice and equal protection of the law.

> As previously indicated, any act in the furtherance of or implementation of the conspiracy agreement creates the liability. Thus, if the jury found an agreement between Argento and Sansone and an act in the furtherance of that agreement to hinder the due course of justice or to deny equal protection under the law, the civil conspiracy is triggered. It is within the dominion of the jury to decide

> upon the evidence what act of the defendants supported the conspiracy.....

Lenard v. Argento, 699 F.2d at 894.

The Court of Appeals, in reviewing the evidence contained in over 2,500 pages of trial transcript, found that there was enough evidence for the jury to conclude that Argento and Sansone entered into and committed "an act" in furtherance of a conspiracy to deny equal protection, and that as a result Lenard sustained injury. The conspiracy encompassed the injuries sustained by Lenard while he was in police custody. The court cited Hampton v. Hanrahan, 600 F.2d at 621 for the established principle of conspiracy law that it is not necessary to

> prove that each participant in a conspiracy knew the "exact limits of the illegal plan or the identity of all participants therein." (citation omitted)..... The participants in the conspiracy must share the general

> conspiratorial objective, but they need not know all the details of the plan designed to achieve the objective..[I]t simply must be shown that there was "a single plan, the essential nature and general scope of which [was] known to each person who is to be held responsible for its consequences."

Lenard at 882.

Petitioners are again engaging in sleight-of-hand when constructing Question 2 out of thin air and they are continuing to misrepresent the facts to keep it afloat.

The Seventh Circuit's finding that "it was not unreasonable for this jury," Lenard v. Argento, 699 F.2d at 883, to find the conspiracy to deprive Lenard of his constitutional rights is one which this Court should hesitate to review. This Court has always been reluctant to review evidence which has already been found sufficient by a jury and two courts below. Rogers v. Lodge, ___U.S.___, 102 S.Ct. 3272, 3279 (1982); Branti v.

Finkel, 445 U.S. 507, 100 S.Ct. 1287, 1291 n.6 (1980) (refers to "our settled practice of accepting, absent the most exceptional circumstances, factual determinations in which the district court and the court of appeals have concurred..."); Int'l Brotherhood of Electrical Workers v. Foust, 442 U.S. 42, 99 S.Ct. 2121, 2124 n.7 (1979); United States v. Ceccolini, 435 U.S. 268, 98 S.Ct. 1054, 1058 (1978); Graver Mfg. Co. v. Linde Co., 336 U.S. 271, 275 (1949). See also United States v. Johnston, 268 U.S. 220, 227 (1925); Houston Oil Co. v. Goodrich, 245 U.S. 440, 441 (1918). The deference to factfinders inherent in this "two court rule" is especially strong where the credibility of witnesses was central to the findings. Such was the case here. See Berenyi v. District Director, 385 U.S. 630, 635 (1967). For this reason, and others, this Court has

wisely been reluctant to review findings of fact in cases like the instant one.

Nor does the Seventh Circuit's application of the law of civil conspiracy to this case conflict with decisions of this Court as Petitioners claim. Much less can there be found the "direct, immediate and irreconcilable" conflict which weighs heavily in favor of issuance of a writ of certiorari. R. STERN & E. GRESSMAN, SUPREME COURT PRACTICE 273 (5th ed. 1978). The cases cited by the Petitioners as conflicting with the decision in the instant case merely stand for the proposition that an overt act, whereby another was injured or deprived of his rights, is necessary before liability for a civil conspiracy can attach. Petition for Writ of Certiorari at 14-15.

The Petitioners cite Carey v.

Piphus, 435 U.S. 247 (1978) as their prime example of a legal conflict because in Carey "this Court recognized that as a general rule tort rules of damages should be applied in civil rights actions..." Petition for Writ of Certiorari at 30. While it is true that in Carey this Court recognized that common law tort rules of damages are "the appropriate starting point" in fashioning a theory of civil rights damages, the Court goes on to note that where constitutional rights are involved, "the common law does not always recognize an analogous cause of action, Id., 435 U.S. at 258. Consequently, "the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question." Id. at 259. And finally, "courts of law are capable of making the types of judgment

concerning causation and magnitude of injury necessary to accord meaningful compensation for invasion of [constitutional] rights." Id., quoting Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 409 (1971).

The Seventh Circuit has done nothing in conflict with the principles of Carey. It has, in fact, been faithful to all these principles by applying the general rules of liability for civil conspiracy. Since the common law does not recognize a conspiracy to deprive one of equal protection, it necessarily would not impose liability for manifestations of such a conspiracy that do not overlap a common law tort. On the other hand, §1985(c) covers all unconstitutional conspiracies which otherwise meet the statutory criteria.

The Petitioners do not seem to

understand this point. Deprivations of equal protection can be both subtle and broadreaching. In this case the deprivation encompassed a wide range of police conduct that injured Lenard after he was taken into custody. The lower courts both found that it could reasonably be concluded that these injuries were the result of an unconstitutional conspiracy set into motion by Argento and Sansone. That conclusion presents no conflict with applicable law.

Nor does this case present a significant question of federal law that is in need of resolution. For the reasons discussed above, Question 2 has been cut out of whole cloth and not out of the fabric of this case. It simply is not presented here. In addition, the facts of the instant case are so egregious, "the magnitude of injury" so

great, that the Seventh Circuit's holding is a limited one which might not be applicable in less severe situations.

III

PETITIONERS ARE LIABLE FOR INJURIES AND DEPRIVATIONS SUSTAINED BY RESPONDENT AND THE "LAWFULNESS" OF THE ARREST IS NOT A BAR TO SUCH LIABILITY

With Question 3 the Petitioners ask how can they be liable for the injuries and constitutional deprivations sustained by Lenard while in custody regardless of the lawfulness of Lenard's arrest or the causation of the injuries and deprivations. The answer to this question has been argued throughout this Response, and is found in the body of established civil conspiracy law as correctly summarized and applied by the Court of Appeals. It is really the law of conspiracy that Petitioners are railing against. It does not matter which conspirator actually used excessive

force on Lenard, who doused him with water, who taunted him, who denied him medical care. The requisite causation has been established. The charge to the jury was "not isolated to a particular event but rather related to the deprivation of rights of 'due course of justice' and 'equal protection under the law.'" Lenard v. Argento, 699 F.2d at 892 (footnote omitted). This is not a state tort lawsuit. Under §1985 each overt act need not be independently actionable. Lawrence v. Acree, 665 F.2d 1319 (D.C. Cir. 1981). The scope of this conspiracy encompassed the injuries and deprivations of rights sustained by Lenard while in police custody.

Even Petitioners concede that it is established law that the use of excessive force or violence by law enforcement personnel violates the victim's

constitutional rights. Petition for a Writ of Certiorari at 33. As another court has said

> [T]he constitutionality of defendants' conduct rests on such factors as the need for the application of force, the relationship between the need and the amount of force that was used, the extent of injury inflicted and whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.

Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir. 1973) (Friendly, J.) cert denied, 414 U.S. 1033 (1973).

Petitioners interpose the "lawfulness" of Lenard's arrest as if that somehow absolves them of any liability for injury and deprivation of constitutional rights sustained while in custody. Whether or not an arrest is lawful is irrelevant to the prohibition against deprivations of constitutional rights, the use of excessive force or the

imposition of punishment on a arrestee. See Bell v. Wolfish, 441 U.S. 520 (1979) (due process requires that a pretrial detainee not be punished); Estelle v. Gamble, 429 U.S. 97 (1976) (deliberate indifference of authorities to serious medical needs violates prisoner's rights); Putnam v. Gerloff, 639 F.2d 415 (8th Cir. 1981) (violation of liberty without due process to chain and handcuff detainees who attempted escape); Clark v. Ziedonis, 513 F.2d 79 (7th Cir. 1975) (shot fired at youths ignoring command to halt while fleeing from a felony was unreasonable and excessive under circumstances).

In short, Petitioners have demonstrated no legal conflict regarding this question, nor have they pointed out how this is a federal question of sufficient import to merit Supreme Court

review.

Finally, it must be pointed out that granting the Petition for Writ of Certiorari at this time would be improvident because the Seventh Circuit has ordered a remand on the question of damages. The Petitioners remain free to seek appeal and certiorari after remand should they be dissatisfied with the results reached by the lower courts. They will not be prejudiced by waiting, while judicial economy is served by denying the writ at this point. This Court has often been reluctant to review cases that have not been finally disposed of. Brotherhood of Locomotive Firemen and Enginemen v. Bangor and Aroostook R.R., 389 U.S. 327, 328 (1967); Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 254, 258 (1916) (certiorari not granted until sought for the second time; the first time appellate court had

remanded for issuance of injunction and determination of damages).

CONCLUSION

Respondent respectfully suggests that the Petition for a Writ of Certiorari fails to indicate any basis for this Court's consideration. There is neither an important federal question here that is in need of resolution, nor is the decision of the Court of Appeals in conflict with applicable decisions of this Court. The jury, the district court and the Court of Appeals all found the Petitioners liable for depriving Bennie Lenard of his right to equal protection of the laws in violation of 42 U.S.C. §1983. The acts perpetrated against Lenard were sadistic, punitive and barbaric and are not, nor they be tolerated under the Constitution. The Petitioners have distorted both what the

decision of the Seventh Circuit held as well as what the evidence in the case was. For all these reasons this Court should deny certiorari, and attorneys fees should be awarded Respondent for preparation of this Answer.

Respectfully submitted,

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